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U.S. Dept. of State, CA/OCS/PRI
Adoptions Regulations Docket Room
SA-29
2201 C Street, NW
Washington, DC 20520

cc: Senator Norm Coleman (MN)
Senator Mark Dayton (MN)
US SBA, Advocacy
MN SBA

Solicited Comments regarding Docket Number
State/AR-01/96

by

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Child Link International is a small Child Placement Agency, a non-profit 501(c)(3) charitable organization, and a corporation licensed in the State of Minnesota. We have been in existence as a humanitarian aid agency since September, 1996 and as an adoption agency since 1999. We have placed a total of 72 children, as of this date, all from Russia. Our total charge to parents, including every last cent to be spent both at home, in Russia, and in travel costs is \$15,800 for one child and \$17,800 for two. This figure includes ALL expenses. If all of the Proposed Rules are placed upon our small agency, we estimate that these figures could conceivably double.

As the Proposed Rules as published in the **Federal Register** on September 15, 2003 for the implementation of the Hague Convention on Intercountry Adoption and the accreditation of agencies are going to make the largest impact upon small agencies such as Child Link International, we have inspected the rules in detail and are making the following comments in hope that they will be taken into serious consideration.

1) Impact on Prospective Parents

We understand that the Proposed Rules are being considered in order to "promote child safety, child and family well-being, and stability for children in need of a permanent family placement through intercountry adoption", and to "help ensure that adoption service providers are taking appropriate steps to protect children and to strengthen and support families involved in the intercountry adoption process."

This is all fine and well, but we do not agree that the Rules, as written, necessarily do this. We feel that with the huge financial burden that will be ultimately put upon prospective parents to finance all that the Rules require of agencies, that fewer parents will be able to afford an adoption, and **ultimately, fewer children will find a permanent family.**

Our goals as a small agency have been to treat all prospective parents with equal respect, kindness, and fairness; to do all of our work in an ethical manner; to keep the interests of the child(ren) as our utmost responsibility; to work one-on-one with each family in preparation and counseling; to encourage the camaraderie and connection of our families one with another; to facilitate a smooth adoption process; and to keep the cost of adoption to a minimum in order to make it possible for good (not necessarily rich) families to adopt. In order to do this, we have contracted with a Social Worker, as an independent contractor, rather than employing a Social Worker full-time. The Director has worked out of her home, rather than rent an office. We have refused to offer bribes or given expensive gifts for any services done in Russia. We have educated our parents through the home study and personal visits with the Director.

We feel that many of the new Rules will interfere in our ability to provide the above; with Big Brother watching over us, and then charging us (ultimately, the prospective parents) for the services we are already offering.

3) Specific Comments

Part 96.7(b)(2) - "Pursuant to such agreement, to remit to the Complaint Registry a portion of the accrediting entity's fees collected under its approved schedule of fees, to cover the costs of such services."

There has been no estimated amount published for this, so it is difficult to determine the impact on our agency. However, we consider this mass punishment for all, to cover the improprieties of a few. We believe that complaints and/or lawsuits should be covered only by the agency that is in question.

Part 96.8(a) - "An accrediting entity may charge fees for accreditation or approval services under this part only in accordance with a schedule of fees approved by the Secretary."

Once again, it is very difficult at this stage to make comment, as requested, when there is no dollar amount attached to this statement. Are we looking at \$100s or \$1,000s for each agency? When an agency is placing an average of 20 children, there are few parents to bear the cost.

(b)(2) - "Include in each fee for full Convention accreditation or approval the cost of all activities associated with the accreditation or approval cycle, including but not limited to, costs for completing the accreditation or approval process, complaint review and investigation, routine oversight and enforcement, and other data collection and reporting activities, except that separate fees based on actual costs incurred may be charged for the travel and maintenance of evaluators."

Why should the adoption agencies be paying to run a government agency designed to be a watchdog, when we already have the State, the IRS, and the public doing so?

(d) - "Nothing in this section shall be construed to provide a private right of action to challenge any fee charged by an accrediting entity pursuant to a schedule of fees approved by the Secretary."

Taxation, without representation?

Part 96.13(d) - "Prospective adoptive parent(s) acting on own behalf"

We believe that more and more parents will attempt to adopt independently, as the cost through an accredited agency will become astronomical. This opens so many more avenues for the very criminal things that these proposed rules are addressing to close. These parents will be totally unprotected by these Proposed Rules and "trafficking" will become more prevalent.

Part 96.27(d) - "The accrediting entity will assign points to each different standard, or to each element of a standard, depending on the relative importance of the particular standard (or element) to compliance with the Convention and the IAA."

Purely subjective. This in itself, could cause a wide variance in the quality of the agencies being accredited.

Part 96.33(b) - "The agency's or person's finances are subject to independent annual audits".

This is a financial hardship on small agencies. We are already discriminated against by the fact that we are an adoption agency. Other non-profits are only required to submit audits once their income is over \$250,000 annually. Our income is far below that, and yet we have been required to submit an external financial audit every other year. The cost for that audit is \$2500 to \$3000, which is already a huge burden for us.

(g) "The agency or person uses an independent professional assessment of the risks it assumes as the basis for determining the type and amount of professional, general, directors' and officers', and other liability insurance to carry."

The Proposed Rule says nothing about who will or may be hired to do this assessment, nor what grounds are being used to determine the outcome. If an agency has had no lawsuits or complaints over a five-year period, would they be exempt then from carrying the risk insurance?

(h) "The agency or person maintains insurance in amounts reasonable related to its exposure to risk, including the risks of providing services through supervised providers, but in no case in an amount less than \$1,000,000 per occurrence."

This is ludicrous! I have contacted many insurance agencies about this and am yet to find any agency that would even offer such coverage, especially considering that further into the rules it requires that the accredited agency is legally responsible for the foreign end of the adoption process.

Furthermore, if there is one insurance agency that decides to take this on, they would be able to set the price of this insurance at any price they wanted, as there would be no competition.

The same thing that has happened in our country with doctors having to quit their profession due to exorbitant malpractice insurance will soon happen to the adoption agencies of this country. Once the general public (led by greedy attorneys) find that there are deep pockets to dig into, they will. There will be increased lawsuits for any little thing that may be perceived as breach of contract or tort.

We believe that each agency should be allowed to determine their own amount of liability insurance, and even whether or not, they wish to carry it. We believe, once again, that if you do your job properly and fairly, that lawsuits are unnecessary. Why pad the pockets of rich attorneys?

We also believe that this Rule will eventually cause agencies to *never* place a special needs child, because they will be in fear of redress. Even though the parents may have believed that they wanted a special needs child, what would stop them later from deciding that the child takes more care than they wish to give, and knowing that the provision of \$1,000,000 is available, they will then sue the agency.

Part 96.34(d) - "The fees, wages, or salaries paid to the directors, officers, and employees of the agency or person are not unreasonably high in relation to the services actually rendered, taking into account the location, number, and qualifications of staff, workload, requirements, budget, and size of the agency or person, and available norms for compensation within the intercountry adoption community."

Purely subjective, again. Who determines this, and how? What happened to free enterprise? The consumers will ultimately decide if the cost is too high.

Part 96.36 - "Prohibition on child buying."

Isn't child buying already prohibited by law? Why rewrite the Statutes?

Part 96.37(a) - "The agency or person only uses employees with appropriate qualifications and credentials to perform, in connection with a Convention adoption, adoption-related social service functions that require the application of clinical skills and judgment (home studies, child background studies, counseling, parent preparation, post-placement, and other similar services."

This would affect us immensely, as we are too small to employ a social worker full-time. At this time, we contract with an LISW to do our homestudies. She is working as an Independent Contractor. We cannot afford to cover Social Security, Workman's Compensation, and a bookkeeper to do the payroll functions that employees require.

Part 96.38 (a) - "Training requirements for social service personnel."

We agree that the agency must cover the items listed under (1) with new personnel.

(b) However, the items in (2) are the reasons we hire or contract with a licensed Social Worker in the first place. What did they learn in school in order to get their Master's Degree? These are the things they should already know.

(c) The State already requires the Social Worker to take continuing education classes for credit each year. Our Social Worker is also working full-time in another function. Is it fair to require an additional 20 hours of adoption related training each year? Who pays for this? Ultimately, the parents again.

Part 96.39 (b)(3) - "The number of children awaiting adoption, when available."

This section may as well be stricken. There is never any way to keep an accurate account of children who are legally adoptable in a foreign country.

Part 96.46(c)(1) - "Assumes tort, contract, and other civil liability to the prospective adoptive parent(s) for the foreign supervised provider's provision of the contracted adoption services and its compliance with the standards in this subpart F; and (2) Maintains a bond, escrow account, or liability insurance in an amount sufficient to cover the risks of liability arising from its work with foreign supervised providers."

How is it even conceivable that we can be legally responsible for a provider in a foreign country? Laws change, personnel changes in the Adoption Center, the Consulate, the orphanages, the Ministry of Education. Our representative in Russia needs to interact with all of these people on a daily basis, which in turn may affect her own work. How can we possibly be legally responsible for a whole foreign system?

Part 96.48(a) - "The agency or person provides prospective adoptive parent(s) with at least ten hours (independent of the home study) of preparation and training, as described in paragraphs (b) and (c) of this section, designed to promote a successful intercountry adoption."

This rule does not take into account that small agencies have only 3 or 4 couples at the same stage in the process of adoption at any one time. We would have to hire another person just to conduct these 10 hours of training. I am sure that agencies will come together to hire teachers for these classes, however the requirements listed in Part 96.48(c) are so specific to country and region that the counseling would need to be done on a one-on-one basis. Who is going to pay for the personnel, the development of these programs, and materials? Why can't these issues be covered during the regular homestudy process, as they are now? Who is going to keep all the records of the nature and extent of the training and preparation provided as required in Part 96.48(h).

We believe that the parents should be able to avail themselves of seminars, internet information, questions they wish to have addressed during the homestudy, interviewing other families who have adopted through the same agency or others, without the federal government requiring them to sit through classes that may or may not pertain to their particular adoption.

This whole section could be scrapped, except for Part 96.48(5)(e), which reads, "The agency or person provides additional in-person, individualized counseling and preparation, as needed, to meet the needs of the parent(s) in light of the particular child(ren) to be adopted and his or her special needs, and any other training or counseling needed in light of the child background study or the home study."

Part 96.52(a) - "The agency or person keeps the Central Authority of the other Convention country and the Secretary informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required."

On every file, along every step of the way? This is impossible. We would spend every day submitting reports.

(c) - "The agency or person takes all necessary and appropriate measures to perform any tasks in a Convention adoption case that the Secretary identifies are required to comply with the Convention, the IAA, or any regulations implementing the IAA."

This open-ended statement could lead to a huge federalism issue, and therefore, should be stricken.

3) Grandfathering

It seems that the U.S. Secretary of State is trying to reinvent the wheel. There are many adoption agencies that are working very well and very ethically in the international adoption realm. Would it not be prudent for the Secretary of State to recognize this fact, and after looking at an Agency's track record - ie. successful adoptions, disruptions and dissolutions, complaints, law suits, etc., to "grandfather" that agency as an accredited agency? Why all the extra hovering?

It is our suggestion for the Department to take a survey of all adoptive parents from each agency. If satisfaction is high, then go ahead and accredit the agency. What speaks louder than satisfied clients? If there are problems within an agency, they will show up in a natural pattern in the surveys. Why punish all agencies with layers and layers of bureaucracy for a few bad ones?

New agencies (working in international adoptions less than three years) could work under these accredited agencies until they establish their own track record for three years. At that time, if there are no complaints and no lawsuits against the new agency, they should also receive their accreditation.

We feel that there would be an extreme amount of Federal control over something that is already being handled adequately at the State level. We do not agree with the assessment under the *Executive Order 13132: Federalism* as written in the Proposed Rules. We believe that there is a substantial direct effect "on the distribution of power and responsibilities among the various levels of government." We believe that the States have been doing an adequate job of licensing and monitoring Adoption Agencies in their respective State and should continue to do so. This would easily be implemented by assigning each State's Secretary of State to be the *accrediting entity*. The cost of this would be negligible, as they are already in the position of licensing and overseeing the adoption agencies in their state.

The Proposed Rules give no estimate of the cost to start and maintain new Accreditation Entities throughout the U.S. As an agency, how are we to know the impact this expense will have on our operations? Until there are published amounts, there is no way to know and then it may be too late for almost all smaller agencies.

In Conclusion:

It is our opinion that this huge governmental machine that is being built from the ground up is not taking into account that for the most part, the system isn't broken - why try to fix it? A few unscrupulous agents or agencies should be held accountable for any crimes they may have committed, and the rest of us should be able to run our agencies in the way that we have been doing so - ethically, and fairly. These tactics are only going to cause an aura of suspicion and mistrust, and eventually litigation, on the part of prospective parents.

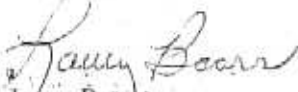
The cost of adoption is going to become out of reach for many parents wishing to adopt internationally.

Many agencies will be going out of business due to the new requirements of added costs, personnel, and reporting.

Fewer children will be placed in loving, permanent families.

We believe that the entire Proposed Rules, as written, needs to be revamped to become less intrusive in the lives of prospective parents, and in the agencies who have been created to successfully and lovingly assist them in adopting the children they so want.

Sincerely,


Laurie Baars
Child Link International